

## Internal Revenue Service

Number: **200743031**

Release Date: 10/26/2007

Index Number: 2057.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-154620-06

Date: JUNE 27, 2007

### Legend

Husband	=
Wife	=
Brother	=
Son	=
Daughter	=
Accountant	=
Attorney	=
Business	=
Year	=
Date 1	=
Date 2	=
Date 3	=
<u>a</u>	=
Building 1	=
Building 2	=

Dear :

This is in response to your October 11, 2006 letter and other correspondence requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make a new election to include Building 1 as a qualifying family owned business interest under § 2057.

The facts are as follows:

Husband and Wife died simultaneously in an airplane crash on Date 1. Wife's will designated her brother, Brother, as sole beneficiary of her estate. Husband died intestate and his children from a previous marriage, Son and Daughter, were assigned through the laws of intestacy as equal beneficiaries of his estate. All community assets were allocated 50% to each estate.

At the time of their death, Husband and Wife were employees and shareholders of Business. Business was a closely held C corporation with all issued stock vested equally in the names of Husband and Wife as community property. Husband and Wife also owned, as community property, Building 1 that serves as the location of Business. Brother continues to operate business with no plans to sell, liquidate, or otherwise dispose of Business.

Brother, in his role as executor of Wife's estate, relied completely on Accountant and Attorney to provide guidance and to execute the necessary filings. Accountant timely filed the estate tax return for Wife with an extension on Date 2. At the direction of Accountant and Attorney, Brother made the § 2057 election for the stock of Business and a. The reported value of the stock and a exceeded 50% of the adjusted gross estate. Accordingly, Accountant decided not to include Building 1 as a qualified family owned business interest.

During Year, Wife's Form 706 underwent examination. The examination determined that mortgages for Building 1 and Building 2 were incorrectly reported as non-recourse debt that had been netted against the market values of the real properties on Schedule A. The examination modifications to gross-up the properties on Schedule A and to report the mortgages on Schedule K caused the adjusted gross estate to increase. The reported value of the stock and a no longer exceeded 50% of the adjusted gross estate so the qualified family owned business interest deduction was disallowed. The executor executed a Form 890, Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment – Estate, Gift, and Generation-Skipping Transfer Tax.

On Date 3, the executor filed Form 843, Claim for Refund, and attached Supplemental Form 706. The Supplemental Form 706 reports valuation, expense, and format revisions as determined by the auditor. Also reported on the Supplemental Form 706 is the inclusion of Building 1, along with the stock of Business and a, as qualifying family owned business interests.

You have requested a ruling for an extension of time under § 301.9100 to make a new election to include Building 1 as a qualifying family owned business interest under § 2057.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides, that for purposes of the tax imposed by § 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent.

Section 2057(a)(2) provides that the deduction allowed by § 2057 shall not exceed \$ 675,000.

Section 2057(b)(1) provides, generally, that § 2057 shall apply to an estate if (A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States, (B) the executor elects the application of this section and files the agreement referred to in § 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests described in § 2057(b)(2), plus the amount of the gifts of such interests determined under § 2057(b)(3), exceeds 50 percent of the adjusted gross estate, and (D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of § 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(b)(2) provides that the qualified family-owned business interests described in this paragraph are the interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of § 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that for purposes of § 2057, the term "qualified family-owned business interest" means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family; (2) at least 70 percent of such entity is so owned by members of 2 families, and, at least 30 percent of such entity is so owned by the decedent and members of the decedent's family; or (3) at least 90 percent of such entity is so owned by members of 3 families, and, at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

Section 2057(i)(3)(H) provides that, for purposes of making the election and filing the agreement under § 2057(b)(1)(B), rules similar to the rules under § 2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) shall apply.

Section 2057(j) provides that § 2057 will not apply to estates of decedent's dying after December 31, 2003.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001. The election shall be made in such manner as the Secretary shall by regulations prescribe.

Section 2032A(d)(3) provides that the Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under § 2032A(d)(1) and submits the agreement referred to in § 2032A(d)(2) within the time prescribed, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failure to provide such information.

Section 20.2032A-8(a)(2) of the Estate Tax Regulations provides, in part, that an election under § 2032A need not include all real property included in an estate that is eligible for special use valuation, but sufficient property to satisfy the threshold requirements of § 2032A(b)(1)(B) must be specially valued under the election.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that

the executor acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Therefore, an extension of time is granted until 60 days from the date of this letter to include Building 1 as a qualifying family owned business interest under § 2057. This election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer) tax return and filed with the Cincinnati Service Center. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
Passthroughs & Special Industries

Enclosures

Copy for section 6110 purposes  
Copy of this letter